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611.94A/4-1453

FOREIGN SERVICE DESPATCH

FROM : AMEMBASSY, TOKYO

2119
DESP. NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON.

April 14, 1953
DATE

REF :

DEPARTMENT OF STATE A/CDC/HR

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Guidance DATE 3/19/54

SUBJECT: Transmittal of Memorandum of Conversation on FCN Treaty

(2)

Enclosed is the original copy of a Memorandum of Conversation prepared by the Embassy summarizing informal discussions and final negotiations from October 15, 1952 to March 11, 1953 on the FCN Treaty between the United States and Japan. Representatives of the Embassy and the Ministry of Foreign Affairs agreed that one memorandum, covering all the final discussions and summarizing the major points under a single heading for each article of the Treaty, would be more useful than the fuller treatment followed in the first 21 memoranda of conversation previously transmitted to the Department. The present memorandum, like the previous, was prepared in four copies, all of which were signed by both the Economic Counselor and Mr. Takio ODA, Director of the Economic Affairs Bureau, Ministry of Foreign Affairs, and chief Japanese representative in the negotiations.

As was initially suggested by the Department in connection with the earlier memoranda, the original copy is transmitted for the Department's files; the second and third copies were delivered to the Ministry of Foreign Affairs, one of which will presumably be forwarded to the Japanese Embassy in Washington; the fourth copy has been retained for the Embassy's files.

With reference to the original texts of the Treaty transmitted to the Department as enclosures to the Embassy's Despatch 2025, April 3, 1953, the Department is advised that these were carefully reviewed in accordance with Chapter XI of the Foreign Service Regulations and that the Japanese translation was verified by the reporting officer with the assistance of several of the Embassy's translating staff. The following slight deviations from the English text were noted in the Japanese translation, and accepted by the Embassy following further discussions with the Ministry of Foreign Affairs:

a. The phrase "administrative tribunals and agencies" in paragraph 1, Article IV (and in paragraph 1 g, Article XXI, and paragraph 1 of the Protocol) was translated into Japanese as "administrative organs"; the Japanese pointed out that administrative tribunals existed before the war but were abolished when the judiciary system was revised following the adoption of the new Constitution; they alleged that the Japanese term "administrative tribunals" in the Treaty would be opposed by the Attorney General and would confuse users of the Treaty.

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THE LEGAL ADVISER

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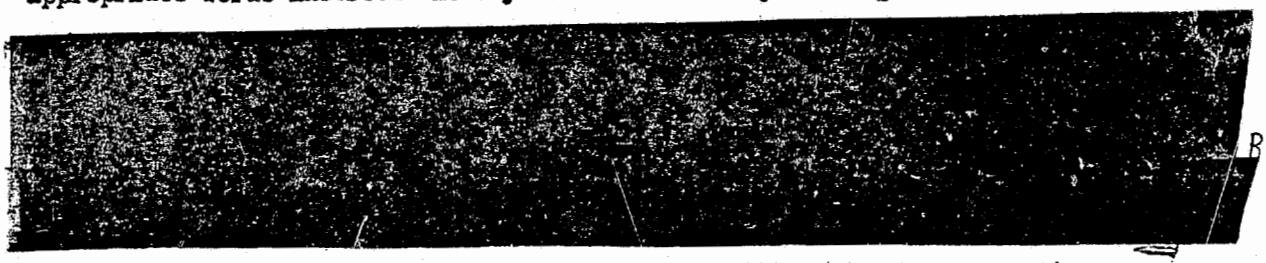
b. The term "to effect a moderate increase in very low monetary reserves", paragraph 2, Article XII, was translated as "to effect an increase to an appropriate extent in, et cetera"; the Japanese state that no exact translation of the word "moderate" can be made, and that the substitute term is the closest approximation possible; it was agreed that the concept of "moderate increase" applied to the term employed in the Japanese text.

Various other corrections to the Japanese translation were requested by the Embassy, although the Ministry did not deliver the draft of the translation for the Embassy's review until two days before the actual signature on April 2. Two rather serious changes were involved, requiring last-minute "negotiations" which promised to develop into a continuation of the formal discussions concluded two weeks before. The English text of paragraph 15 of the Protocol, involving one of the principal issues of negotiation, states that, during a transitional period of 3 years from the ratification of the Treaty, Japan may continue to apply existing restrictions "on the purchase by aliens, with yen, of outstanding shares in Japanese enterprises". The word "outstanding" is basic to this provision, as was clearly understood by the Japanese representatives. The translation submitted to the Embassy, however, read merely "on the purchase by aliens, with yen, of shares and stocks in Japanese enterprises"; Japanese officials declared that it was impossible to translate the word "outstanding", and insisted that the Japanese phrase remain as drafted. When the reporting officer invited their attention to the fact that local newspapers had for many weeks reported and editorialized on the restrictions on the purchase by aliens of "outstanding shares", they replied that the newspaper term was a "vulgar, every-day expression" having no place in the refined phraseology employed in the Japanese text of the Treaty. Needless to say, after further discussions with various Government agencies, an appropriate translation was discovered and inserted in the Treaty (now reading, somewhat tortuously, "stocks, including proprietary interests, already issued").

Another example of post-negotiation discussions involves the phrase "shall be accorded, within the territories of the other Party, not less than national treatment and most-favored-nation treatment" in the latter part of paragraph 4, Article VI. The Japanese translators of the Bureau of Legislation deleted the words "not less than", thus substantially modifying this provision. When this slight oversight was brought to the attention of officials of the Ministry of Foreign Affairs, they replied that the reason for this deletion was simply that "the sentence is already so long", but that "it made no real difference, anyway"! Again, the Embassy "negotiated" with the Ministry and succeeded in having the appropriate words inserted the day before the Treaty was signed.



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The enclosed memorandum of conversation was also subject to renewed negotiation even after the formal discussions were concluded, the Japanese representatives attempting to insert complicated questions and elicit naive answers concerning issues which had not previously been raised. The memorandum was reviewed in draft by the Japanese representatives and numerous additions made at their request. These revisions account for some of the repetitions and the tortured English to be found in parts of the memorandum, although an attempt was made to rephrase all Japanese contributions or, alternatively, to insert them as direct quotations of statements made by Mr. Oda.

The Embassy has on various occasions informed the Department of its sincere appreciation for the prompt and helpful replies to its many requests for information and clarification, as well as for the expeditious consideration of the various proposals made by the Japanese in the closing days of the negotiations. On behalf of the Economic Counselor and the officers associated with him in these negotiations, the reporting officer wishes to express deepest personal appreciation for the cooperation extended by the Department and its officers in supplying a wealth of background information, thoughtful analyses of problems arising in the course of these discussions, and valuable interpretative comments with figured so prominently in bringing these negotiations to a successful conclusion.

For the Ambassador:

Peyton Kerr

Peyton Kerr
First Secretary of Embassy

Enclosure:

Copy of Memorandum of Conversation,
FCN Treaty Negotiations,
October 15, 1952 to March 11, 1953.

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FOREIGN SERVICE DESPATCH

FROM AMEMBASSY, TOKYO
1106
DESP. NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON.
December 11, 1952
DATE

REF :

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SUBJECT: FCN Discussions

Enclosed is a copy of a press release of the Ministry of Foreign Affairs which was carried in the English-language Nippon Times on December 6 in connection with the draft United States-Japan FCN Treaty. The release, which was given fairly wide coverage by Tokyo newspapers, states that the FCN Treaty is "expected to take shape soon if Japan finds no particular objection to the views set forth by the U.S. authorities on points at issue". Mention is made of a meeting between Mr. Takio ODA, Director of the Economic Affairs Bureau of the Ministry, and the Economic Counselor. At this meeting, which was held on December 4, the latter relayed to Mr. Oda the various suggestions and acceptances of Japanese proposals contained in the Department's more recent telegrams on the subject. Mr. Oda expressed his gratitude for the sympathetic consideration given the problems raised by the Japanese representatives and indicated his belief that most of the points at issue had been resolved.

According to the enclosed press report, three questions remain pending in the negotiation of the Treaty. The first and third of those listed in the report have not been raised by Mr. Oda or his assistants, and it would appear that they are already covered by the pertinent provisions of the Treaty. The second point, however, is of significance and has been the subject of lengthy discussions with the Japanese representatives. As the Department is aware, the Embassy informed Mr. Oda and his associates that national and most-favored-nation treatment is to be accorded after the initial screening of investment. Mr. Oda has also been informed that the United States regards its acceptance of the Japanese desire to screen investments as a major concession in the interests of formulating a workable and mutually beneficial treaty. He is aware, however, of our firm position that investment should not be restricted or discriminated against after it has been permitted entry under such a screening procedure.

The Ministry of Foreign Affairs has pointed out, however, that the current Foreign Investment Law provides for control over foreign capital even after its introduction (e.g., discriminatory restrictions on the acquisition of outstanding stocks sold on the Japanese market). The Embassy, in turn, has indicated the undesirability of such discriminatory measures which would tend to discourage the foreign investment which Japan itself declares it sorely needs. It has been suggested to Mr. Oda that he give careful consideration to the earliest amendment of the Foreign Investment Law to remove such artificial and unnecessary barriers to local investment as now exist.

The Embassy believes that it would be most desirable that such legislation be amended forthwith, prior to the submission of the FCN Treaty to the Diet for ratification.

RWAdams/nll REPORTER

1 Enclosure

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This would then constitute a corrective step taken independently by the Japanese Government and would not be subject to Diet criticism of unwarranted intervention in domestic matters by the United States, an accusation almost certain to be made if the Law were later amended to conform with the provisions of the Treaty. The Economic Counselor and the Financial Attache intend to press at every opportunity for the earliest amendment of the Foreign Investment Law and will review the entire problem on December 11 with Mr. Oda, Mr. Gengo SUZUKI of the Ministry of Finance (recently returned from the United States), Mr. Nobuhiko USHIBA, Chief of the International Trade Bureau, MITI, and other Government officials.

It will be noted that the enclosed press report states that the Ministry of Foreign Affairs believes that formal negotiations on the treaty will be held in Tokyo "by the end of the year at the earliest". Previous releases issued by the Ministry had been to the effect that negotiations would take place in December and that the Treaty would be signed late in December or early in January. The Ministry is planning an ambitious program of FCN Treaty negotiations with numerous Governments, including most of the countries in Europe, South America and Southeast Asia. There is also a plan to renegotiate the prewar treaties recently revived with Denmark, Sweden, Switzerland, Finland, France (only some provisions revived temporarily), Germany, Thailand, and others. Some of these negotiations are scheduled for the very near future, particularly those with Canada, Italy, Spain, and Mexico, and it is the hope of the Ministry that the Treaty with the United States can be ratified by the Diet as soon as possible in order that it may serve as a model in the future.

Mr. Oda has confirmed these statements and expressed the hope that formal negotiations may be held and the Treaty concluded not later than January. The Embassy considers it most fortunate that Mr. Oda headed the Japanese side during the final round of informal discussions. Unlike most Japanese officials, he is able to appreciate the reasonableness of a statement by the Embassy without attempting to confuse the issue with the interminable arguments which characterized earlier discussions on the FCN Treaty. Mr. Oda is not afraid to make decisions and it is believed that he has ably presented the U.S. views to other agencies of the Japanese Government. He has already assured the withdrawal of many of the objectionable proposals advanced by the Ministry of Finance and other agencies.

Unfortunately, Mr. Oda is departing early in January to attend the conference of Japanese diplomatic and consular officers in South and Southeast Asia scheduled to open in New Delhi on January 5. After attending this conference Mr. Oda plans to visit Paris, presumably in connection with GATT and COCOM matters, and therefore may not return to Tokyo until February. He informed the Economic Counselor that his chief assistant, Mr. Kenichi OTABE (who has just attended the regional Japanese diplomatic conference in Washington), will replace him as head of the Ministry's FCN Treaty negotiators during his absence.

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From (Classification) From

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For the Ambassador:

Frank A. Waring
Counselor of Embassy
for Economic Affairs

Enclosure:

Copy of Press Report, "Draft Shaping Up of Pact With U.S.", Nippon Times, December 6, 1952. (UNCLASSIFIED).

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Desp. No. | UNCLASSIFIED | Desp. No. 1106
From | (Classification) | From Tokyo

Draft Shaping Up of Pact With U.S.

Nippon Times, December 6, 1952

The draft of the projected Japan-U.S. treaty of commerce and navigation is expected to take shape soon if Japan finds no particular objection to the views set forth by the U.S. authorities on points at issue, Government sources told Kyodo.

This point emerged after a meeting between Takio Oda, chief of the Foreign Office Economic Affairs Bureau, and Frank Waring, chief of the American Embassy's Economic Affairs Division.

Preliminary negotiations on the treaty draft were brought to an end in mid-October.

The source revealed that the draft treaty consists of 27 to 28 articles, and the treaty would remain in force 10 years. The treaty would include up-to-date regulations to meet the latest international situation. It even stipulated, they disclosed, the clauses already formulated in the Japan-U.S. treaty of commerce and navigation of 1911, which concerned, 1) freedom of entry, sojourn and residence, 2) protection of persons and property, 3) entrepreneural activity, 4) customs and domestic taxes and 5) regulations concerning trade and shipping.

Not only these stipulations but also such up-to-date clauses as protection and encouragement of investment, foreign exchange control and social security incorporated in other similar postwar treaties, are included in the Japan-U.S. draft, they added.

Items in the draft over which the parties concerned had shown the widest difference of views were entrepreneural activity, protection of investment and foreign exchange control.

Following a series of concessions by both sides, the source said, the present pending issues are said to be the following:

1. How to determine the type of enterprises to which "national treatment" cannot be accorded.

2. What restrictions should be imposed on remittance of profits by citizens of the other contracting country, and whether room should be left in the draft for both sides to strengthen their own foreign exchange control in the future.

3. In case the "most-favored-nation" treatment is accorded each other, can the United States apply the GATT tariff to Japan which is yet to be admitted to the General Agreement on Tariffs and Trade.

On these questions, they revealed, the Foreign Office is sounding out the Finance Ministry, MITI and the Justice Ministry and their conclusions are expected about the middle of the month. They surmised that formal negotiation would be conducted between Foreign Minister Katsuo Okazaki and American Ambassador Robert Murphy here by the end of the year at the earliest.

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